

ESTTA Tracking number: **ESTTA509172**

Filing date: **12/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Joe Wells Enterprises, Inc.
Granted to Date of previous extension	12/05/2012
Address	210 W. Taft Ave. Orange, CA 92865 UNITED STATES
Attorney information	Bruce B. Brunda Stetina, Brunda, Garred & Brucker 75 EnterpriseSuite 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com Phone:949-855-1246

Applicant Information

Application No	85570624	Publication date	08/07/2012
Opposition Filing Date	12/05/2012	Opposition Period Ends	12/05/2012
Applicant	Swole Sports Nutrition, LLC 221 6574 N State Road 7 Coconut Creek, FL 33073 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2011/11/10 First Use In Commerce: 2012/02/06
All goods and services in the class are opposed, namely: Dietary and nutritional supplements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	EMERGE		
Goods/Services	Dietary and nutritional supplement		

Attachments	Notice Of Opposition w Ex 1.pdf (9 pages)(624266 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bruce B. Brunda/
Name	Bruce B. Brunda
Date	12/05/2012

Case: JWELS-015M
Trademark Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the Matter of Trademark Application Serial No. 85/570,624

Joe Wells Enterprises, Inc.,)	Opposition No.:
)	
Opposer,)	Trademark Application No. 85/570,624
)	
vs.)	For the Mark: EMERGE
)	
Swole Sports Nutrition, LLC,)	
)	
Applicant.)	
<hr style="width: 40%; margin-left: 0;"/>)

NOTICE OF OPPOSITION

BOX TTAB - FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

In the matter of the application of Swole Sports Nutrition, LLC of Coconut Creek, Florida, (hereinafter "Applicant") for registration of the trademark EMERGE, Application Serial No. 85/570,624, published in the Official Gazette on August 7, 2012, at TM 410, Joe Wells Enterprises, Inc., a California corporation, with offices at 210 W. Taft Avenue, Orange, California, 92865, (hereinafter "Opposer"), believes that it will be

damaged by registration of the mark shown in Serial No. 85/570,624, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been engaged in the extensive development, advertising, licensing and marketing of a variety of products including sports beverages. In connection therewith, Opposer has used, in interstate commerce the term EMERGE, as a Trademark for sports beverages. Materials evidencing use of Opposer's EMERGE mark are attached as **Exhibit 1**.

2. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its products, and has expended considerable sums in creating valuable goodwill among the purchasing public under its EMERGE mark.

3. On information and belief, Opposer's date of first use of Opposer's mark EMERGE is prior to the Applicant's first use of the mark EMERGE for the goods identified in application Serial No. 85/570,624.

4. Notwithstanding Opposer's rights in and to said EMERGE and MAXEMERGE marks, Applicant filed an application based on use for registration of EMERGE in International Class 005 on March 15, 2012. Said application was published for opposition in the Official Gazette on August 7, 2012 at TM 410.

5. The goods identified in Applicant's application Serial No. 85/570,524 include, or are related to, sports beverages.

6. Applicant's EMERGE mark is confusingly similar to Opposer's EMERGE mark used by Applicant and is likely to cause confusion, deception and mistake with respect to the source of goods marketed by Applicant under the term EMERGE.

7. Applicant's use of the mark EMERGE interferes with Opposer's use of its EMERGE mark, and use of, or registration of, the mark EMERGE by Applicant will seriously damage Opposer.

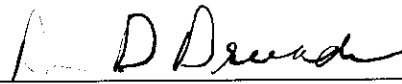
WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of the mark EMERGE to Applicant be denied.

The filing fee for this Opposition in the amount of \$300 (one international class) is authorized to be charged to Opposer's representative's Deposit Account.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: December 5, 2012

By: 

Bruce B. Brunda, Reg. No. 28,497
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
(949) 855-1246
Counsel for Opposer,
Joe Wells Enterprises, Inc.

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **December 5, 2012**, the attached **NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Swole Sports Nutrition, LLC
221 6574 N. State Road 7
Coconut Creek, Florida 33073

Andrea Perez Affleck
FEARS NACHAWATI, PLLC
4925 Greenville Avenue, Ste. 715
Dallas, Texas 75206-4015

Executed on **December 5, 2012** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.



Ellen Burns

EXHIBIT 1



Product Data Sheet

emerge™

BODY SLENDERIZING DRINK MIX

Emerge is a powerful fat loss and body composition slenderizing system specially formulated to inhibit appetite, promote the release of fat from stored fat cells and accelerate the burning of fat for fuel. **Emerge** contains clinically proven weight loss ingredients to suppress appetite, provide maximum calorie burning specifically from fat, increase energy and elevate the body's metabolism. The combination of selected ingredients promotes a metabolic shift, scientists describe as "fuel partitioning" by shifting the burning of fat as fuel rather than fat for storage. By using a product like **Emerge**, fuel partitioning benefits can ultimately lead to enhanced lean body composition changes.

Emerge contains the patented ingredient Advantra Z®, an extract of a citrus fruit (Citrus aurantium). Advantra Z® contains a natural and synergistic family of bioactive amines including synephrine, N-methyltyramine, hordenine, octopamine and tyramine. The naturally occurring form of synephrine in Advantra Z® is called P-synephrine and is the safe form for humans. Advantra Z® has been shown to be safe and effective in human ingestion, stimulating metabolic thermogenesis, increasing the breakdown of fat (lipolysis), increasing the ratio of lean muscle to total body mass, improving athletic performance and exerting an appetite suppressing effect. Additionally, Advantra Z® increases metabolic rate without affecting heart rate or blood pressure.

Caffeine has been added to **Emerge** as an extensively researched ingredient that enhances fuel partitioning and providing an effective thermogenic, metabolic, and fat oxidation effect in humans. Green Tea Extract, containing highly concentrated levels of EGCG, has been added as numerous published studies have now shown that EGCG is effective in reducing body weight, mainly body fat, by increasing thermogenesis and fat burning. Green Tea Extract boosts and supports mood, enhances energy and promotes a sense of well-being. The addition of Panax Ginseng and Glucuronolactone further promotes well being, energy, mood and focus. Caffeine enhances the effectiveness of Advantra Z®, Green Tea Extract and Panax Ginseng.

L-Carnitine is absolutely essential for all fat metabolism to take place in cells and the body cannot burn a single molecule of fat without L-Carnitine. In terms of function, it plays a critical role in transporting fatty acids into the mitochondria, the "furnace of the cells", for fat burning to produce energy (technically known as β oxidation). L-Taurine is a non-essential sulfur containing amino acid with high concentrations in skeletal muscles. The combination of Caffeine and L-Taurine appears to be beneficial enhance endurance performance. L-Taurine promotes the formation of taurocholate which supports fat metabolism in the liver.

Octopamine is known to exert adrenergic effects in mammals stimulating alpha(2)-adrenoceptors and stimulating fat breakdown through beta(3)-adrenoreceptors. NADH is the body's energy transporter. The NADH molecule is how the body transports energy during muscular contraction as well as countless other reactions. Adenosine is found in ATP (Adenosine Tri-Phosphate), the energy molecule in the body. Vinpocetine has the ability to dilate blood vessels thereby enhancing circulation and improving oxygen utilization for support of fat use as energy. Vinpocetine also has antioxidant properties. Evodiamine is a unique compound that acts on the vanilloid receptors to help with body fat utilization.

Emerge will provide you with the most complete and satisfying body composition optimizing system to produce the great body you are after.



Size: Net Wt. 540 g (19.35 oz)

Serving Size: 1 Scoop (Approx. 10g)

Servings Per Container: 30

Flavors: Wild Cherry, Fruit, Grape, Peach, Blueberry, Lemon-Lime, Tangarine, Diet, Watermelon, Vanilla

KEY FEATURES

- Promotes Appetite Suppression and Weight Loss
- Stimulates Thermogenesis With Advantra Z and Caffeine
- Contains Selected Ingredients Promoting "Fuel Partitioning"
- Enhances Mood, Alertness, and Focus

KEY BENEFITS

- Contains Advantra Z which is a proprietary patented ingredient containing the naturally occurring bioactive amines P-synephrine (safe form for humans), N-methyltyramine, hordenine, octopamine and tyramine.
- Advantra Z is the only indicated Citrus aurantium extract for weight loss and physical performance on the market today.
- Contains Green Tea Extract standardized with highly concentrated levels of epigallocatechin gallate (EGCG). Published studies have demonstrated the efficacy of EGCG in reducing body fat, increasing thermogenesis and fat oxidation (fat burning).
- Provides caffeine (300 mg per serving) for effective benefits including thermogenic, metabolic and lipolysis (fat oxidation) effects.
- Panax Ginseng and Glucuronolactone further promotes well being and enhancing energy, mood and focus especially when combined with caffeine.
- L-Carnitine is absolutely essential to transport fatty acids into muscle cells for fat burning (oxidation). Your body cannot burn fat without L-carnitine. Recent studies have shown that L-carnitine, when combined with caffeine, are powerful stimulators of lipolysis (fatty acid oxidation).
- L-Taurine promotes focus and energy.
- Octopamine is known to exert adrenergic effects in mammals stimulating fat breakdown through beta(3)-adrenoreceptors.
- NADH is the body's energy transporter for muscular contraction as well as countless other reactions.
- Adenosine is found in ATP (Adenosine Tri-Phosphate), the energy molecule in the body.

(cont'd on p.2)

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Product Data Sheet

emerge P.2
BODY SLENDERIZING DRINK MIX

Size: Net Wt. 1.07 lb (19.1 oz)
Serving Size: 1 Scoop (Approx. 18 g)
Servings Per Container: 30
Flavors: Cherry Tart, Grape Blast, Strawberry Lemonade, Tangerine Dream, Watermelon Splash

Supplement Facts

Serving Size: 1 Scoop (Approx. 18 g)
Servings Per Container: 30

	Amount Per Serving	% DV*
Calories: 70		
Calories from Fat: 0		
Total Carbohydrate	16 g	5%
Fiber	10 g	40%
Sugars	4 g	**
Vitamin C (as ascorbic acid)	250 mg	416%
Niacin (as niacinamide)	21 mg	105%
Vitamin B6 (as pyridoxine hydrochloride)	2 mg	100%
Vitamin B12 (as cyanocobalamin)	2 mcg	33%

Proprietary Emerge Slenderizing Complex: 1087 mg **
Caffeine (anhydrous), Dandelion Leaf Extract (4:1), Green Tea Extract (Camellia sinensis) (leaf, 45% EGCG), Hoodia gordonii, Advantra 2® (Citrus aurantium 60% synephrine alkaloids), L-Taurine, Panax Ginseng Powder, Glucuronolactone, Adenosine, Octopamine, L-Carnitine, Yohimbine, Vinpocetine, NADH, Evodiamine

*Percent Daily Values are based on a 2,000 calorie diet.
**Daily Value not established.

Directions: As a dietary supplement test your tolerance by taking one half (1/2) scoop with 8 - 16 oz of cold water. After tolerance test, you may take one (1) scoop with cold water. Water can be adjusted up to 16 ounces for taste preference. Stay well hydrated throughout the day while using this product especially in hot and humid temperatures. **DO NOT TAKE AFTER 6 PM. MAY CAUSE SLEEPLESSNESS. DO NOT EXCEED FOUR (4) SCOOPS PER DAY.**

MUST REFRIGERATE AFTER OPENING FOR QUALITY.

OTHER INGREDIENTS (Cherry Tart): Sta-Lite III Polydextrose, Fructose, Fibersol-2®, Malic Acid, Citric Acid, Natural & Artificial Flavors (FD&C Red No. 40 and Blue No. 1), Tri-Calcium Phosphate, Acesulfame Potassium, Sucralose Sweetener, Silicon Dioxide.

OTHER INGREDIENTS (Grape Blast): Sta-Lite III Polydextrose, Fructose, Fibersol-2®, Malic Acid, Citric Acid, Natural & Artificial Flavors (FD&C Red No. 40 and Blue No. 1), Tri-Calcium Phosphate, Acesulfame Potassium, Sucralose Sweetener, Silicon Dioxide.

OTHER INGREDIENTS (Strawberry Lemonade): Sta-Lite III Polydextrose, Fructose, Fibersol-2®, Malic Acid, Citric Acid, Natural & Artificial Flavors (FD&C Red No. 40), Tri-Calcium Phosphate, Acesulfame Potassium, Sucralose Sweetener, Silicon Dioxide.

OTHER INGREDIENTS (Tangerine Dream): Sta-Lite III Polydextrose, Fructose, Fibersol-2®, Malic Acid, Citric Acid, Natural & Artificial Flavors (FD&C Yellow No. 6), Tri-Calcium Phosphate, Acesulfame Potassium, Sucralose Sweetener, Silicon Dioxide.

OTHER INGREDIENTS (Watermelon Splash): Sta-Lite III Polydextrose, Fructose, Fibersol-2®, Malic Acid, Citric Acid, Natural & Artificial Flavors (FD&C Red No. 40), Tri-Calcium Phosphate, Acesulfame Potassium, Sucralose Sweetener, Silicon Dioxide.

WARNING: NOT FOR USE BY INDIVIDUALS UNDER THE AGE OF 18 YEARS. DO NOT USE IF PREGNANT OR NURSING. Consult a physician before starting any diet and exercise program and before using this product. Do not take this product if you have a medical condition. Discontinue use and call a physician or licensed health care professional immediately if you experience unexpected side effects. If taking prescription medications, consult a licensed health care professional prior to use. This product contains 300 mg caffeine per serving. Individuals who consume caffeine with this product may experience serious adverse health effects and those that are sensitive to the effects of caffeine should consult a physician before consuming this product. Improper use of this product may be hazardous to a person's health. Stay well hydrated throughout the day by drinking at least 2 liters of water daily when using this product.

Advantra 2® is a registered trademark of Nutratech, Inc./Zhishin, LLC licensor of U.S. Patents 6,224,873; 6,316,499; 6,340,481; 6,340,482 and Canadian Patent 2,248,854.

Allergy Information: Manufactured in a facility that processes milk, soy and egg proteins, peanuts, other tree nuts and wheat.

Contains 300 mg Caffeine per serving.

SHAKE CONTAINER BEFORE EACH USE TO COMPLETELY DISTRIBUTE INGREDIENTS. BEFORE OPENING, STORE IN A COOL AND DRY PLACE AWAY FROM MOISTURE, SUNLIGHT AND EXCESS HEAT. AFTER OPENING REFRIGERATE FOR QUALITY. EXPOSURE TO MOISTURE AND HUMIDITY CAN CAUSE PRODUCT TO CAKE, CLUMP OR DISCOLOR. ALWAYS KEEP TIGHTLY SEALED.

(cont'd from p.1)

KEY FEATURES (continued)

- Vinpocetine has the ability to dilate blood vessels thereby enhancing circulation and improving oxygen utilization for support of fat use as energy as well as having antioxidant properties.
- Evodiamine is a unique compound that acts on the vanilloid receptors to help with body fat utilization.
- Great tasting flavors!

TARGET MARKET

Primary: Adults seeking a powerful body composition slenderizing formula providing appetite suppression, thermogenic enhancement and faburing clean energy and mood.

Secondary: Fitness athletes looking for an energizing pre-workout formula.

RECOMMENDED STACK

Iso-Extreme

Max Lean Protein

Max Gluta Matrix

Max Glutamine

KEY REFERENCES

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- Westerterp-Plantenga MS et al. Body weight loss and weight maintenance in relation to habitual caffeine intake and green tea supplementation. *Obes Res.* 2005;13:1195-204.
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- Fontana E, Morin N, Prevot D, Carpenne C. Effects of octopamine on lipolysis, glucose transport and amine oxidation in mammalian fat cells. *Comp Biochem Physiol C Toxicol Pharmacol.* 2000;125:33-44.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

To report a serious adverse event, contact:
Max Muscle Sports Nutrition
210 W. Taft Ave., Orange CA 92865
www.maxmuscle.com



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December 05, 2012

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President, Max Muscle Sports Nutrition

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